

By Senator Campbell

32-35-05

1                                   A bill to be entitled  
2           An act relating to the Streamlined Sales and  
3           Use Tax Agreement; amending s. 212.02, F.S.;  
4           redefining the terms "lease," "let," "rental,"  
5           "sales price," and "tangible personal property"  
6           and defining the terms "agent," "seller,"  
7           "certified service provider," "direct mail,"  
8           "prewritten computer software," and "delivery  
9           charges" for purposes of sales and use taxes;  
10          providing applicability; amending s. 212.05,  
11          F.S.; deleting provisions relating to the  
12          rental or lease of motor vehicles; providing  
13          for determining the location of the sale or  
14          recharge of prepaid calling arrangements;  
15          amending s. 212.054, F.S.; providing the time  
16          for applying changes in local option tax rates;  
17          providing guidelines for determining the situs  
18          of certain transactions; providing for notice  
19          of a change in the rate of a local option sales  
20          tax; providing for applicability of s.  
21          202.22(2), F.S., relating to determination of  
22          local tax situs, for the purpose of providing  
23          and maintaining a database of sales and use tax  
24          rates for local jurisdictions; amending s.  
25          212.06, F.S.; defining terms; providing rules  
26          for determining the location of transactions  
27          involving the retail sale of tangible personal  
28          property, digital goods, or services and for  
29          the lease or rental of tangible personal  
30          property; requiring certain business purchasers  
31          to obtain multiple points of use exemption

1 forms; providing for use of such forms;  
2 requiring certain purchasers of direct mail to  
3 obtain a direct mail form; providing for the  
4 use of such form; amending s. 212.08, F.S.,  
5 relating to exemptions from the sales and use  
6 tax; defining and redefining terms used with  
7 respect to the exemption for general groceries;  
8 defining and redefining terms used with respect  
9 to the exemption for medical products and  
10 supplies; revising that exemption; amending s.  
11 212.095, F.S.; revising provisions relating to  
12 refunds; creating s. 212.094, F.S.; requiring a  
13 purchaser seeking a refund or credit under  
14 chapter 212, F.S., to submit a written request  
15 for the refund or credit; providing a time  
16 period within which the dealer must respond to  
17 the written request; amending s. 212.17, F.S.;  
18 prescribing additional guidelines and  
19 procedures with respect to dealer credits for  
20 taxes paid on worthless accounts; creating s.  
21 213.052, F.S.; providing for notice of state  
22 sales or use tax rate changes; creating s.  
23 213.0521, F.S.; providing the effective date  
24 for state sales and use tax rate changes;  
25 amending s. 213.21, F.S.; providing for amnesty  
26 to certain sellers for uncollected or unpaid  
27 sales and use taxes; amending s. 213.256, F.S.,  
28 relating to simplified sales and use tax  
29 administration; defining terms; providing that  
30 authority to administer the Streamlined Sales  
31 and Use Tax Agreement rests with a governing

1 board comprised of representatives of member  
2 states; providing for continuing effect of the  
3 agreement; providing for annual recertification  
4 by member states; creating s. 213.2567, F.S.;  
5 providing for the registration of sellers, the  
6 certification of a person as a certified  
7 service provider, and the certification of a  
8 software program as a certified automated  
9 system by the governing board under the  
10 Streamlined Sales and Use Tax Agreement;  
11 amending s. 212.055, F.S.; conforming a  
12 cross-reference; repealing s. 212.0596(6),  
13 F.S., relating to the exemption from collecting  
14 and remitting any local option surtax for  
15 certain dealers who make mail order sales;  
16 declaring legislative intent; providing for the  
17 adoption of emergency rules; providing an  
18 effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Paragraph (g) of subsection (10) and  
23 subsections (16) and (19) of section 212.02, Florida Statutes,  
24 are amended, and subsections (35), (36), (37), (38), (39), and  
25 (40) are added to that section, to read:

26 212.02 Definitions.--The following terms and phrases  
27 when used in this chapter have the meanings ascribed to them  
28 in this section, except where the context clearly indicates a  
29 different meaning:

30 (10) "Lease," "let," or "rental" means leasing or  
31 renting of living quarters or sleeping or housekeeping

1 accommodations in hotels, apartment houses, roominghouses,  
2 tourist or trailer camps and real property, the same being  
3 defined as follows:

4 (g)1. "Lease," "let," or "rental" also means any  
5 transfer of possession or control of tangible personal  
6 property for a fixed or indeterminate term for consideration.  
7 A clause for a future option to purchase or to extend the  
8 agreement does not preclude an agreement from being a lease or  
9 rental. This definition shall be used for purposes of the  
10 sales and use tax regardless of whether a transaction is  
11 characterized as a lease or rental under generally accepted  
12 accounting principles, the Internal Revenue Code, the Uniform  
13 Commercial Code, or other provisions of federal, state, or  
14 local law. This definition includes agreements covering motor  
15 vehicles and trailers if the amount of consideration may be  
16 increased or decreased by reference to the amount realized  
17 upon sale or disposition of the property as provided in 26  
18 U.S.C. s. 7701(h)(1). This definition does not include:

19 a. A transfer of possession or control of property  
20 under a security agreement or deferred payment plan that  
21 requires the transfer of title upon completion of the required  
22 payments;

23 b. A transfer of possession or control of property  
24 under an agreement that requires the transfer of title upon  
25 completion of required payments and payment of an option price  
26 that does not exceed the greater of \$100 or 1 percent of the  
27 total required payments; or

28 c. A provision of tangible personal property along  
29 with an operator for a fixed or indeterminate period of time.  
30 A condition of this exclusion is that the operator is  
31 necessary for the equipment to perform as designed. For the

1 purpose of this sub-subparagraph, an operator must do more  
2 than maintain, inspect, or set up the tangible personal  
3 property. ~~the leasing or rental of tangible personal property~~  
4 ~~and the possession or use thereof by the lessee or rentee for~~  
5 ~~a consideration, without transfer of the title of such~~  
6 ~~property, except as expressly provided to the contrary herein.~~

7       2. The term "lease," "let," or "rental" does not mean  
8 hourly, daily, or mileage charges, to the extent that such  
9 charges are subject to the jurisdiction of the United States  
10 Interstate Commerce Commission, when such charges are paid by  
11 reason of the presence of railroad cars owned by another on  
12 the tracks of the taxpayer, or charges made pursuant to car  
13 service agreements. The term "lease," "let," "rental," or  
14 "license" does not include payments made to an owner of  
15 high-voltage bulk transmission facilities in connection with  
16 the possession or control of such facilities by a regional  
17 transmission organization, independent system operator, or  
18 similar entity under the jurisdiction of the Federal Energy  
19 Regulatory Commission. However, where two taxpayers, in  
20 connection with the interchange of facilities, rent or lease  
21 property, each to the other, for use in providing or  
22 furnishing any of the services mentioned in s. 166.231, the  
23 term "lease or rental" means only the net amount of rental  
24 involved.

25       (16)(a) "Sales price" applies to the measure subject  
26 to sales tax and means the total amount of consideration,  
27 including cash, credit, property, and services, for which  
28 personal property or services are sold, leased, or rented,  
29 valued in money, whether received in money or otherwise,  
30 without any deduction for:

31       1. The seller's cost of the property sold;

1           2. The cost of materials used, labor or service cost,  
2 interest, losses, all costs of transportation to the seller,  
3 all taxes imposed on the seller, and any other expense of the  
4 seller;

5           3. Charges by the seller for any services necessary to  
6 complete the sale, other than delivery and installation  
7 charges;

8           4. Delivery charges; or

9           5. Installation charges.

10          (b) The term "sales price" does not include:

11           1. Trade-ins allowed and taken at the time of sale if  
12 the amount is separately stated on the invoice, bill of sale,  
13 or similar document given to the purchaser;

14           2. Discounts, including cash, term, or coupons, which  
15 are not reimbursed by a third party, are allowed by a seller,  
16 and taken by a purchaser at the time of sale;

17           3. Interest, financing, and carrying charges from  
18 credit extended on the sale of personal property or services,  
19 if the amount is separately stated on the invoice, bill of  
20 sale, or similar document given to the purchaser; or

21           4. Any taxes legally imposed directly on the consumer  
22 which are separately stated on the invoice, bill of sale, or  
23 similar document given to the purchaser.

24          ~~(16) "Sales price" means the total amount paid for~~  
25 ~~tangible personal property, including any services that are a~~  
26 ~~part of the sale, valued in money, whether paid in money or~~  
27 ~~otherwise, and includes any amount for which credit is given~~  
28 ~~to the purchaser by the seller, without any deduction~~  
29 ~~therefrom on account of the cost of the property sold, the~~  
30 ~~cost of materials used, labor or service cost, interest~~  
31 ~~charged, losses, or any other expense whatsoever. "Sales~~

1 ~~price" also includes the consideration for a transaction which~~  
2 ~~requires both labor and material to alter, remodel, maintain,~~  
3 ~~adjust, or repair tangible personal property. Trade ins or~~  
4 ~~discounts allowed and taken at the time of sale shall not be~~  
5 ~~included within the purview of this subsection "Sales price"~~  
6 ~~also includes the full face value of any coupon used by a~~  
7 ~~purchaser to reduce the price paid to a retailer for an item~~  
8 ~~of tangible personal property; where the retailer will be~~  
9 ~~reimbursed for such coupon, in whole or in part, by the~~  
10 ~~manufacturer of the item of tangible personal property; or~~  
11 ~~whenever it is not practicable for the retailer to determine,~~  
12 ~~at the time of sale, the extent to which reimbursement for the~~  
13 ~~coupon will be made. The term "sales price" does not include~~  
14 ~~federal excise taxes imposed upon the retailer on the sale of~~  
15 ~~tangible personal property. The term "sales price" does~~  
16 ~~include federal manufacturers' excise taxes, even if the~~  
17 ~~federal tax is listed as a separate item on the invoice.~~

18 (19) "Tangible personal property" means and includes  
19 personal property which may be seen, weighed, measured, or  
20 touched or is in any manner perceptible to the senses,  
21 including electric power or energy, water, gas, steam,  
22 prewritten computer software, boats, motor vehicles and mobile  
23 homes as defined in s. 320.01(1) and (2), aircraft as defined  
24 in s. 330.27, and all other types of vehicles. The term  
25 "tangible personal property" does not include stocks, bonds,  
26 notes, insurance, or other obligations or securities;  
27 intangibles as defined by the intangible tax law of the state;  
28 or pari-mutuel tickets sold or issued under the racing laws of  
29 the state.

30 (35) "Agent" means a person appointed by a principal  
31 or authorized to act for the principal in a transaction

1 involving the sale of an item of tangible personal property.  
2 The term also means a person appointed by a seller to  
3 represent the seller before the states that are signatories to  
4 the Streamlined Sales and Use Tax Agreement.

5 (36) "Seller" means any person making sales, leases,  
6 or rentals of personal property or services.

7 (37) "Certified service provider" means an agent  
8 certified under the Streamlined Sales and Use Tax Agreement to  
9 perform all of the seller's sales tax functions, other than  
10 the seller's obligation to remit tax on its own purchases.

11 (38) "Direct mail" means printed material delivered or  
12 distributed by United States mail or other delivery service to  
13 a mass audience or to addressees on a mailing list provided by  
14 the purchaser or at the direction of the purchaser when the  
15 cost of the items is not billed directly to the recipients.  
16 The term includes tangible personal property supplied directly  
17 or indirectly by the purchaser to the direct mail seller for  
18 inclusion in the package containing the printed material. The  
19 term does not include multiple items of printed material  
20 delivered to a single address.

21 (39) "Prewritten computer software" means computer  
22 software, including prewritten upgrades, which is not designed  
23 and developed by the author or other creator to the  
24 specifications of a specific purchaser. The combining of two  
25 or more prewritten computer software programs or prewritten  
26 portions thereof does not cause the combination to be other  
27 than "prewritten computer software." The term includes  
28 software designed and developed by the author or other creator  
29 to the specifications of a specific purchaser when it is sold  
30 to a person other than that purchaser. When a person modifies  
31 or enhances computer software of which the person is not the



1 author or creator, the person is the author or creator only of  
2 that person's modifications or enhancements. Prewritten  
3 computer software, or a prewritten portion thereof, which is  
4 modified or enhanced to any degree, when such modification or  
5 enhancement is designed and developed to the specifications of  
6 a specific purchaser, remains "prewritten computer software";  
7 however, if there is a reasonable, separately stated charge or  
8 an invoice or other statement of the price given to the  
9 purchaser for such modification or enhancement, the  
10 modification or enhancement does not constitute "prewritten  
11 computer software."

12 (40) "Delivery charges" means charges by the seller of  
13 personal property or services for preparation and delivery to  
14 a location designated by the purchaser of personal property or  
15 services, including, but not limited to, transportation,  
16 shipping, postage, handling, crating, and packing. The term  
17 does not include the charges for delivery of "direct mail" as  
18 defined by this section if the charges are separately stated  
19 on an invoice or similar billing document given to the  
20 purchaser.

21 Section 2. The amendment of the terms "lease," "let,"  
22 and "rental" in section 212.02, Florida Statutes, made by this  
23 act applies prospectively only, from January 1, 2006, and does  
24 not apply retroactively to leases or rentals existing before  
25 that date.

26 Section 3. Paragraphs (c) and (e) of subsection (1) of  
27 section 212.05, Florida Statutes, are amended to read:

28 212.05 Sales, storage, use tax.--It is hereby declared  
29 to be the legislative intent that every person is exercising a  
30 taxable privilege who engages in the business of selling  
31 tangible personal property at retail in this state, including

1 | the business of making mail order sales, or who rents or  
2 | furnishes any of the things or services taxable under this  
3 | chapter, or who stores for use or consumption in this state  
4 | any item or article of tangible personal property as defined  
5 | herein and who leases or rents such property within the state.

6 |         (1) For the exercise of such privilege, a tax is  
7 | levied on each taxable transaction or incident, which tax is  
8 | due and payable as follows:

9 |         (c) At the rate of 6 percent of the gross proceeds  
10 | derived from the lease or rental of tangible personal  
11 | property, as defined herein; ~~however, the following special~~  
12 | ~~provisions apply to the lease or rental of motor vehicles:~~

13 |             1. ~~When a motor vehicle is leased or rented for a~~  
14 | ~~period of less than 12 months:~~

15 |                 a. ~~If the motor vehicle is rented in Florida, the~~  
16 | ~~entire amount of such rental is taxable, even if the vehicle~~  
17 | ~~is dropped off in another state.~~

18 |                 b. ~~If the motor vehicle is rented in another state and~~  
19 | ~~dropped off in Florida, the rental is exempt from Florida tax.~~

20 |             2. ~~Except as provided in subparagraph 3., for the~~  
21 | ~~lease or rental of a motor vehicle for a period of not less~~  
22 | ~~than 12 months, sales tax is due on the lease or rental~~  
23 | ~~payments if the vehicle is registered in this state; provided,~~  
24 | ~~however, that no tax shall be due if the taxpayer documents~~  
25 | ~~use of the motor vehicle outside this state and tax is being~~  
26 | ~~paid on the lease or rental payments in another state.~~

27 |             3. ~~The tax imposed by this chapter does not apply to~~  
28 | ~~the lease or rental of a commercial motor vehicle as defined~~  
29 | ~~in s. 316.003(66)(a) to one lessee or rentee for a period of~~  
30 | ~~not less than 12 months when tax was paid on the purchase~~  
31 | ~~price of such vehicle by the lessor. To the extent tax was~~

1 ~~paid with respect to the purchase of such vehicle in another~~  
2 ~~state, territory of the United States, or the District of~~  
3 ~~Columbia, the Florida tax payable shall be reduced in~~  
4 ~~accordance with the provisions of s. 212.06(7). This~~  
5 ~~subparagraph shall only be available when the lease or rental~~  
6 ~~of such property is an established business or part of an~~  
7 ~~established business or the same is incidental or germane to~~  
8 ~~such business.~~

9 (e)1. At the rate of 6 percent on charges for:

10 a. Prepaid calling arrangements. The tax on charges  
11 for prepaid calling arrangements shall be collected at the  
12 time of sale and remitted by the selling dealer.

13 (I) "Prepaid calling arrangement" means the separately  
14 stated retail sale by advance payment of communications  
15 services that consist exclusively of telephone calls  
16 originated by using an access number, authorization code, or  
17 other means that may be manually, electronically, or otherwise  
18 entered and that are sold in predetermined units or dollars  
19 whose number declines with use in a known amount.

20 (II) The sale or recharge of the prepaid calling  
21 arrangement is deemed to take place in accordance with s.  
22 212.06(3)(d). In the case of a sale of a mobile communications  
23 service that is a prepaid calling arrangement, the retail sale  
24 is sourced at ~~If the sale or recharge of the prepaid calling~~  
25 ~~arrangement does not take place at the dealer's place of~~  
26 ~~business, it shall be deemed to take place at the customer's~~  
27 ~~shipping address or, if no item is shipped, at the customer's~~  
28 ~~address or~~ the location associated with the customer's mobile  
29 telephone number.

30 (III) The sale or recharge of a prepaid calling  
31 arrangement shall be treated as a sale of tangible personal

1 | property for purposes of this chapter, whether or not a  
2 | tangible item evidencing such arrangement is furnished to the  
3 | purchaser, and such sale within this state subjects the  
4 | selling dealer to the jurisdiction of this state for purposes  
5 | of this subsection.

6 |         b. The installation of telecommunication and  
7 | telegraphic equipment.

8 |         c. Electrical power or energy, except that the tax  
9 | rate for charges for electrical power or energy is 7 percent.

10 |         2. The provisions of s. 212.17(3), regarding credit  
11 | for tax paid on charges subsequently found to be worthless,  
12 | shall be equally applicable to any tax paid under the  
13 | provisions of this section on charges for prepaid calling  
14 | arrangements, telecommunication or telegraph services, or  
15 | electric power subsequently found to be uncollectible. The  
16 | word "charges" in this paragraph does not include any excise  
17 | or similar tax levied by the Federal Government, any political  
18 | subdivision of the state, or any municipality upon the  
19 | purchase, sale, or recharge of prepaid calling arrangements or  
20 | upon the purchase or sale of telecommunication, television  
21 | system program, or telegraph service or electric power, which  
22 | tax is collected by the seller from the purchaser.

23 |         Section 4. Section 212.054, Florida Statutes, is  
24 | amended to read:

25 |         212.054 Discretionary sales surtax; limitations,  
26 | administration, and collection.--

27 |         (1) No general excise tax on sales shall be levied by  
28 | the governing body of any county unless specifically  
29 | authorized in s. 212.055. Any general excise tax on sales  
30 | authorized pursuant to said section shall be administered and  
31 | collected exclusively as provided in this section.

1           (2)(a) The tax imposed by the governing body of any  
2 county authorized to so levy pursuant to s. 212.055 shall be a  
3 discretionary surtax on all transactions occurring in the  
4 county which transactions are subject to the state tax imposed  
5 on sales, use, services, rentals, admissions, and other  
6 transactions by this chapter and communications services as  
7 defined for purposes of chapter 202. The surtax, if levied,  
8 shall be computed as the applicable rate or rates authorized  
9 pursuant to s. 212.055 times the amount of taxable sales and  
10 taxable purchases representing such transactions. If the  
11 surtax is levied on the sale of an item of tangible personal  
12 property or on the sale of a service, the surtax shall be  
13 computed by multiplying the rate imposed by the county within  
14 which the sale occurs by the amount of the taxable sale. The  
15 sale of an item of tangible personal property or the sale of a  
16 service is not subject to the surtax if the property, the  
17 service, or the tangible personal property representing the  
18 service is delivered within a county that does not impose a  
19 discretionary sales surtax.

20           (b) However:

21           1. The sales amount above \$5,000 on any item of  
22 tangible personal property shall not be subject to the surtax.  
23 However, charges for prepaid calling arrangements, as defined  
24 in s. 212.05(1)(e)1.a., shall be subject to the surtax. For  
25 purposes of administering the \$5,000 limitation on an item of  
26 tangible personal property, if two or more taxable items of  
27 tangible personal property are sold to the same purchaser at  
28 the same time and, under generally accepted business practice  
29 or industry standards or usage, are normally sold in bulk or  
30 are items that, when assembled, comprise a working unit or  
31 part of a working unit, such items must be considered a single

1 item for purposes of the \$5,000 limitation when supported by a  
2 charge ticket, sales slip, invoice, or other tangible evidence  
3 of a single sale or rental.

4 2. In the case of utility services covering a period  
5 starting before and ending after the effective date of the  
6 surtax, the rate applies as follows:

7 a. In the case of a rate adoption or increase, the new  
8 rate applies to the first billing period starting on or after  
9 the effective date of the surtax or increase.

10 b. In the case of a rate decrease or termination, the  
11 new rate applies to bills rendered on or after the effective  
12 date of the rate change. ~~billed on or after the effective date~~  
13 ~~of any such surtax, the entire amount of the charge for~~  
14 ~~utility services shall be subject to the surtax. In the case~~  
15 ~~of utility services billed after the last day the surtax is in~~  
16 ~~effect, the entire amount of the charge on said items shall~~  
17 ~~not be subject to the surtax.~~

18  
19 "Utility service," as used in this section, does not include  
20 any communications services as defined in chapter 202.

21 3. In the case of written contracts which are signed  
22 prior to the effective date of any such surtax for the  
23 construction of improvements to real property or for  
24 remodeling of existing structures, the surtax shall be paid by  
25 the contractor responsible for the performance of the  
26 contract. However, the contractor may apply for one refund of  
27 any such surtax paid on materials necessary for the completion  
28 of the contract. Any application for refund shall be made no  
29 later than 15 months following initial imposition of the  
30 surtax in that county. The application for refund shall be in  
31 the manner prescribed by the department by rule. A complete

1 application shall include proof of the written contract and of  
2 payment of the surtax. The application shall contain a sworn  
3 statement, signed by the applicant or its representative,  
4 attesting to the validity of the application. The department  
5 shall, within 30 days after approval of a complete  
6 application, certify to the county information necessary for  
7 issuance of a refund to the applicant. Counties are hereby  
8 authorized to issue refunds for this purpose and shall set  
9 aside from the proceeds of the surtax a sum sufficient to pay  
10 any refund lawfully due. Any person who fraudulently obtains  
11 or attempts to obtain a refund pursuant to this subparagraph,  
12 in addition to being liable for repayment of any refund  
13 fraudulently obtained plus a mandatory penalty of 100 percent  
14 of the refund, is guilty of a felony of the third degree,  
15 punishable as provided in s. 775.082, s. 775.083, or s.  
16 775.084.

17 4. In the case of any vessel, railroad, or motor  
18 vehicle common carrier entitled to partial exemption from tax  
19 imposed under this chapter pursuant to s. 212.08(4), (8), or  
20 (9), the basis for imposition of surtax shall be the same as  
21 provided in s. 212.08 and the ratio shall be applied each  
22 month to total purchases in this state of property qualified  
23 for proration which is delivered or sold in the taxing county  
24 to establish the portion used and consumed in intracounty  
25 movement and subject to surtax.

26 (3) Except as otherwise provided in this section, a  
27 surtax applies to a retail sale, lease, or rental of tangible  
28 personal property, a digital good, or a service when, under s.  
29 212.06(3), the transaction occurs in a county that imposes a  
30 surtax under s. 212.055.

31

1           ~~(4)(3)~~ To determine whether a transaction occurs in a  
2 county imposing a surtax, the following provisions apply ~~For~~  
3 ~~the purpose of this section, a transaction shall be deemed to~~  
4 ~~have occurred in a county imposing the surtax when:~~

5           ~~(a)1.~~ The retail sale of a modular or manufactured  
6 home, not including a mobile home, occurs in the county to  
7 which the house is delivered. The sale includes an item of  
8 ~~tangible personal property, a service, or tangible personal~~  
9 ~~property representing a service, and the item of tangible~~  
10 ~~personal property, the service, or the tangible personal~~  
11 ~~property representing the service is delivered within the~~  
12 ~~county. If there is no reasonable evidence of delivery of a~~  
13 ~~service, the sale of a service is deemed to occur in the~~  
14 ~~county in which the purchaser accepts the bill of sale.~~

15           ~~(b)2.~~ The retail sale, excluding a lease or rental, of  
16 any motor vehicle that does not qualify as transportation  
17 equipment, as defined in s. 212.06(3)(g), or the retail sale  
18 of a ~~The sale of any motor vehicle or~~ mobile home of a class  
19 or type that ~~which~~ is required to be registered in this state  
20 or in any other state occurs ~~shall be deemed to have occurred~~  
21 ~~only~~ in the county identified from ~~as~~ the residential  
22 ~~residence~~ address of the purchaser on the registration or  
23 title document for the ~~such~~ property.

24           ~~(c)~~ A lease or rental of real property occurs in the  
25 county in which the real property is located.

26           ~~(d)~~ A transient rental transaction occurs in the  
27 county in which the rental property is located.

28           ~~(e)(b)~~ Admission charged for an event occurs ~~The event~~  
29 ~~for which an admission is charged is located~~ in the county in  
30 which the event is held.

31



1           (f) A transaction made from a coin-operated amusement  
2 or vending machine occurs in the county in which the machine  
3 is located.

4           (g) An original order to sell tangible personal  
5 property taken by a florist occurs in the county in which the  
6 florist taking the order is located.

7           ~~(c) The consumer of utility services is located in the~~  
8 ~~county.~~

9           (h)(d)1. The retail sale, excluding the lease or  
10 rental, of any aircraft that does not qualify as  
11 transportation equipment, as defined in s. 212.06(3)(g), or of  
12 any boat of a class or type that is required to be registered,  
13 licensed, titled, or documented in this state or by the United  
14 States Government occurs in the county to which the aircraft  
15 or boat is delivered.

16           2. The use ~~user~~ of any aircraft or boat of a class or  
17 type ~~that which~~ is required to be registered, licensed,  
18 titled, or documented in this state or by the United States  
19 Government imported into the county for use, consumption,  
20 distribution, or storage to be used or consumed occurs in the  
21 county in which the user is located ~~in the county~~.

22           ~~3.2.~~ However, it shall be presumed that such items  
23 used outside the taxing county for 6 months or longer before  
24 being imported into the county were not purchased for use in  
25 the county, except as provided in s. 212.06(8)(b).

26           ~~4.3.~~ This paragraph does not apply to the use or  
27 consumption of items upon which a like tax of equal or greater  
28 amount has been lawfully imposed and paid outside the county.

29           ~~(i)(e)~~ The purchase ~~purchaser~~ of any motor vehicle or  
30 mobile home of a class or type that ~~which~~ is required to be  
31 registered in this state occurs in the county identified from

1 ~~the residential address of the purchaser is a resident of the~~  
2 ~~taxing county as determined by the address appearing on or to~~  
3 ~~be reflected on the registration document for the such~~  
4 property.

5 ~~(j)(f)1. The use, consumption, distribution, or~~  
6 ~~storage of a Any motor vehicle or mobile home of a class or~~  
7 ~~type that which is required to be registered in this state and~~  
8 ~~that is imported from another state occurs in the county to~~  
9 ~~which it is imported into the taxing county by a user residing~~  
10 ~~therein for the purpose of use, consumption, distribution, or~~  
11 ~~storage in the taxing county.~~

12 2. However, it shall be presumed that such items used  
13 outside the taxing county for 6 months or longer before being  
14 imported into the county were not purchased for use in the  
15 county.

16 ~~(g) The real property which is leased or rented is~~  
17 ~~located in the county.~~

18 ~~(h) The transient rental transaction occurs in the~~  
19 ~~county.~~

20 ~~(i) The delivery of any aircraft or boat of a class or~~  
21 ~~type which is required to be registered, licensed, titled, or~~  
22 ~~documented in this state or by the United States Government is~~  
23 ~~to a location in the county. However, this paragraph does not~~  
24 ~~apply to the use or consumption of items upon which a like tax~~  
25 ~~of equal or greater amount has been lawfully imposed and paid~~  
26 ~~outside the county.~~

27 ~~(k)(j) A transaction occurs in a taxing county when~~  
28 ~~the dealer owing a use tax on purchases or leases is located~~  
29 ~~in the county.~~

30 ~~(k) The delivery of tangible personal property other~~  
31 ~~than that described in paragraph (d), paragraph (e), or~~

1 ~~paragraph (f) is made to a location outside the county, but~~  
2 ~~the property is brought into the county within 6 months after~~  
3 ~~delivery, in which event, the owner must pay the surtax as a~~  
4 ~~use tax.~~

5 ~~(1) The coin operated amusement or vending machine is~~  
6 ~~located in the county.~~

7 ~~(m) The florist taking the original order to sell~~  
8 ~~tangible personal property is located in the county,~~  
9 ~~notwithstanding any other provision of this section.~~

10 (5)(4)(a) The department shall administer, collect,  
11 and enforce the tax authorized under s. 212.055 pursuant to  
12 the same procedures used in the administration, collection,  
13 and enforcement of the general state sales tax imposed under  
14 the provisions of this chapter, except as provided in this  
15 section. The provisions of this chapter regarding interest  
16 and penalties on delinquent taxes shall apply to the surtax.  
17 Discretionary sales surtaxes shall not be included in the  
18 computation of estimated taxes pursuant to s. 212.11.  
19 Notwithstanding any other provision of law, a dealer need not  
20 separately state the amount of the surtax on the charge  
21 ticket, sales slip, invoice, or other tangible evidence of  
22 sale. For the purposes of this section and s. 212.055, the  
23 "proceeds" of any surtax means all funds collected and  
24 received by the department pursuant to a specific  
25 authorization and levy under s. 212.055, including any  
26 interest and penalties on delinquent surtaxes.

27 (b) The proceeds of a discretionary sales surtax  
28 collected by the selling dealer located in a county which  
29 imposes the surtax shall be returned, less the cost of  
30 administration, to the county where the selling dealer is  
31 located. The proceeds shall be transferred to the

1 Discretionary Sales Surtax Clearing Trust Fund. A separate  
2 account shall be established in such trust fund for each  
3 county imposing a discretionary surtax. The amount deducted  
4 for the costs of administration shall not exceed 3 percent of  
5 the total revenue generated for all counties levying a surtax  
6 authorized in s. 212.055. The amount deducted for the costs  
7 of administration shall be used only for those costs which are  
8 solely and directly attributable to the surtax. The total  
9 cost of administration shall be prorated among those counties  
10 levying the surtax on the basis of the amount collected for a  
11 particular county to the total amount collected for all  
12 counties. No later than March 1 of each year, the department  
13 shall submit a written report which details the expenses and  
14 amounts deducted for the costs of administration to the  
15 President of the Senate, the Speaker of the House of  
16 Representatives, and the governing authority of each county  
17 levying a surtax. The department shall distribute the moneys  
18 in the trust fund each month to the appropriate counties,  
19 unless otherwise provided in s. 212.055.

20 (c)1. Any dealer located in a county that does not  
21 impose a discretionary sales surtax but who collects the  
22 surtax due to sales of tangible personal property or services  
23 delivered outside the county shall remit monthly the proceeds  
24 of the surtax to the department to be deposited into an  
25 account in the Discretionary Sales Surtax Clearing Trust Fund  
26 which is separate from the county surtax collection accounts.  
27 The department shall distribute funds in this account using a  
28 distribution factor determined for each county that levies a  
29 surtax and multiplied by the amount of funds in the account  
30 and available for distribution. The distribution factor for  
31 each county equals the product of:

1           a. The county's latest official population determined  
2 pursuant to s. 186.901;

3           b. The county's rate of surtax; and

4           c. The number of months the county has levied a surtax  
5 during the most recent distribution period;

6  
7 divided by the sum of all such products of the counties  
8 levying the surtax during the most recent distribution period.

9           2. The department shall compute distribution factors  
10 for eligible counties once each quarter and make appropriate  
11 quarterly distributions.

12           3. A county that fails to timely provide the  
13 information required by this section to the department  
14 authorizes the department, by such action, to use the best  
15 information available to it in distributing surtax revenues to  
16 the county. If this information is unavailable to the  
17 department, the department may partially or entirely  
18 disqualify the county from receiving surtax revenues under  
19 this paragraph. A county that fails to provide timely  
20 information waives its right to challenge the department's  
21 determination of the county's share, if any, of revenues  
22 provided under this paragraph.

23           ~~(5) No discretionary sales surtax or increase or~~  
24 ~~decrease in the rate of any discretionary sales surtax shall~~  
25 ~~take effect on a date other than January 1. No discretionary~~  
26 ~~sales surtax shall terminate on a day other than December 31.~~

27           (6) The governing body of any county levying a  
28 discretionary sales surtax shall enact an ordinance levying  
29 the surtax in accordance with the procedures described in s.  
30 125.66(2).  
31

1           (7)(a) Any adoption, repeal, or rate change of the  
2 surtax by the governing body of any county levying a  
3 discretionary sales surtax or the school board of any county  
4 levying the school capital outlay surtax authorized by s.  
5 212.055(6) is effective on April 1. A county or school board  
6 adopting, repealing, or changing the rate of such tax shall  
7 notify the department within 10 days after final adoption by  
8 ordinance or referendum of an adoption, repeal ~~imposition,~~  
9 ~~termination,~~ or rate change of the surtax, but no later than  
10 November 16 immediately preceding such April 1 ~~November 16~~  
11 ~~prior to the effective date~~. The notice must specify the time  
12 period during which the surtax will be in effect and the rate  
13 and must include a copy of the ordinance and such other  
14 information as the department requires by rule. Failure to  
15 timely provide such notification to the department shall  
16 result in the delay of the effective date for a period of 1  
17 year.

18           (b) In addition to the notification required by  
19 paragraph (a), the governing body of any county proposing to  
20 levy a discretionary sales surtax or the school board of any  
21 county proposing to levy the school capital outlay surtax  
22 authorized by s. 212.055(6) shall notify the department by  
23 October 1 if the referendum or consideration of the ordinance  
24 that would result in imposition, termination, or rate change  
25 of the surtax is scheduled to occur on or after October 1 of  
26 that year. Failure to timely provide such notification to the  
27 department shall result in the delay of the effective date for  
28 a period of 1 year.

29           (c) The department shall provide notice of the  
30 adoption, repeal, or change to affected sellers by December 1  
31 immediately preceding the April 1 effective date.

1           (d) Notwithstanding any ordinance provision to the  
2 contrary regarding the termination date of a surtax, a surtax  
3 may be terminated only on an April 1st. A surtax imposed  
4 before January 1, 2006, for which an ordinance provides a  
5 different termination date shall terminate on the April 1st  
6 following the termination date established in the ordinance.

7           (8) With respect to any motor vehicle or mobile home  
8 of a class or type which is required to be registered in this  
9 state, the tax due on a transaction occurring in the taxing  
10 county as herein provided shall be collected from the  
11 purchaser or user incident to the titling and registration of  
12 such property, irrespective of whether such titling or  
13 registration occurs in the taxing county.

14           (9) For the purpose of the state providing and  
15 maintaining a database of all sales and use tax rates for all  
16 local taxing jurisdictions in accordance with the Streamlined  
17 Sales and Use Tax Agreement under s. 213.256, s. 202.22(2)  
18 applies.

19           (a) A seller or certified service provider who  
20 collects and remits the state and local tax imposed by this  
21 chapter shall be held harmless from tax, interest, and  
22 penalties due solely as a result of relying on erroneous data  
23 on tax rates, boundaries, or taxing jurisdiction assignments  
24 provided by the state if the seller or certified service  
25 provider exercises due diligence in applying one or more of  
26 the following methods for determining the taxing jurisdiction  
27 and tax rate for a transaction:

28           1. Employing an electronic database provided by the  
29 department under s. 202.22(2); or  
30  
31

1           2. Employing a database that has been approved by the  
2 governing board and was developed by a seller or certified  
3 service provider.

4           (b) If a seller or certified service provider does not  
5 use one of the methods specified in paragraph (a), the seller  
6 or certified service provider may be held liable to the  
7 department for tax, interest, and penalties that are due for  
8 charging and collecting the incorrect amount of tax.

9           Section 5. Present subsections (3) through (16) of  
10 section 212.06, Florida Statutes, are renumbered as  
11 subsections (4) through (17), respectively, new subsection (3)  
12 is added to that section, and present subsection (3) of that  
13 section is amended to read:

14           212.06 Sales, storage, use tax; collectible from  
15 dealers; "dealer" defined; dealers to collect from purchasers;  
16 legislative intent as to scope of tax.--

17           (3) This subsection must be used to determine the  
18 location where a transaction occurs for purposes of applying  
19 the tax imposed by this chapter.

20           (a) For purposes of this subsection, the terms  
21 "receive" and "receipt" mean:

- 22           1. Taking possession of tangible personal property;  
23           2. Making first use of services; or  
24           3. Taking possession or making first use of digital  
25 goods, whichever occurs first.

26  
27 The terms do not include possession by a shipping company on  
28 behalf of the purchaser.

29           (b) For purposes of this subsection, the term  
30 "product" means tangible personal property, a digital good, or  
31 a service.



1           (c) This section does not apply to the sales or use  
2 taxes levied on:

3           1. The retail sale or transfer of a boat, modular  
4 home, manufactured home, or mobile home.

5           2. The retail sale, excluding a lease or rental, of a  
6 motor vehicle or aircraft that does not qualify as  
7 transportation equipment, as defined in paragraph (g). The  
8 lease or rental of these items shall be deemed to have  
9 occurred in accordance with paragraph (f).

10           3. The retail sale of tangible personal property by a  
11 florist.

12  
13 Such retail sales are deemed to take place at the location  
14 determined under s. 212.054(4).

15           (d) The retail sale of a product, excluding a lease or  
16 rental, shall be deemed to take place:

17           1. When the product is received by the purchaser at a  
18 business location of the seller, at that business location.

19           2. When the product is not received by the purchaser  
20 at a business location of the seller, at the location where  
21 receipt by the purchaser, or the purchaser's donee, designated  
22 as such by the purchaser, occurs, including the location  
23 indicated by instructions for delivery to the purchaser or  
24 donee, known to the seller.

25           3. When subparagraphs 1. and 2. do not apply, at the  
26 location indicated by an address for the purchaser which is  
27 available from the business records of the seller which are  
28 maintained in the ordinary course of the seller's business,  
29 when use of this address does not constitute bad faith.

30           4. When subparagraphs 1., 2., and 3. do not apply, at  
31 the location indicated by an address for the purchaser

1 obtained during the consummation of the sale, including the  
2 address of a purchaser's payment instrument, if no other  
3 address is available, when use of this address does not  
4 constitute bad faith.

5 5. When subparagraphs 1., 2., 3., and 4. do not apply,  
6 including when the seller is without sufficient information to  
7 apply the previous paragraphs, the address from which tangible  
8 personal property was shipped, from which the digital good or  
9 the computer software delivered electronically was first  
10 available for transmission by the seller, or from which the  
11 service was provided, disregarding any location that merely  
12 provided the digital transfer of the product sold.

13 (e) The lease or rental of tangible personal property,  
14 other than property identified in paragraphs (f) and (g),  
15 shall be deemed to have occurred as follows:

16 1. For a lease or rental that requires recurring  
17 periodic payments, the first periodic payment is deemed to  
18 take place in accordance with paragraph (d), notwithstanding  
19 the exclusion of lease or rental in paragraph (d). Subsequent  
20 periodic payments are deemed to have occurred at the primary  
21 property location for each period covered by the payment. The  
22 primary property location is determined by an address for the  
23 property provided by the lessee which is available to the  
24 lessor from its records maintained in the ordinary course of  
25 business, when use of this address does not constitute bad  
26 faith. The property location is not altered by intermittent  
27 use of the property at different locations, such as use of  
28 business property that accompanies employees on business trips  
29 and service calls.

30 2. For a lease or rental that does not require  
31 recurring periodic payments, the payment is deemed to take

1 place in accordance with paragraph (d), notwithstanding the  
2 exclusion of a lease or rental in paragraph (d).

3 3. This paragraph does not affect the imposition or  
4 computation of sales or use tax on leases or rentals based on  
5 a lump sum or accelerated basis or on the acquisition of  
6 property for lease.

7 (f) The lease or rental of a motor vehicle or aircraft  
8 that does not qualify as transportation equipment, as defined  
9 in paragraph (g), shall be sourced as follows:

10 1. For a lease or rental that requires recurring  
11 periodic payments, each periodic payment is deemed to take  
12 place at the primary property location. The primary property  
13 location shall be determined by an address for the property  
14 provided by the lessee which is available to the lessor from  
15 its records maintained in the ordinary course of business,  
16 when use of this address does not constitute bad faith. This  
17 location may not be altered by intermittent use at different  
18 locations.

19 2. For a lease or rental that does not require  
20 recurring periodic payments, the payment is deemed to take  
21 place in accordance with paragraph (d), notwithstanding the  
22 exclusion of a lease or rental in paragraph (d).

23 3. This paragraph does not affect the imposition or  
24 computation of sales or use tax on leases or rentals based on  
25 a lump sum or accelerated basis or on the acquisition of  
26 property for lease.

27 (g) The retail sale, including lease or rental, of  
28 transportation equipment shall be deemed to take place in  
29 accordance with paragraph (d), notwithstanding the exclusion  
30 of a lease or rental in paragraph (d). The term  
31 "transportation equipment" means:

1           1. Locomotives and rail cars that are used for the  
2 carriage of persons or property in interstate commerce;

3           2. Trucks and truck tractors with a Gross Vehicle  
4 Weight Rating (GVWR) of 10,001 pounds or greater, trailers,  
5 semitrailers, or passenger buses that are registered through  
6 the International Registration Plan and operated under  
7 authority of a carrier authorized and certificated by the  
8 United States Department of Transportation or another federal  
9 authority to engage in the carriage of persons or property in  
10 interstate commerce;

11           3. Aircraft that are operated by air carriers  
12 authorized and certificated by the United States Department of  
13 Transportation or another federal or a foreign authority to  
14 engage in the carriage of persons or property in interstate or  
15 foreign commerce; or

16           4. Containers designed for use on and component parts  
17 attached or secured on the items set forth in subparagraphs 1.  
18 through 3.

19           ~~(4)(3)(a)~~ Except as provided in paragraphs (a) and  
20 ~~paragraph~~ (b), every dealer making retail sales, whether  
21 within or outside the state, of tangible personal property for  
22 distribution, storage, or use or other consumption, in this  
23 state, shall, at the time of making sales, collect the tax  
24 imposed by this chapter from the purchaser.

25           (a) Notwithstanding subsection (3), a business  
26 purchaser that is not a holder of a direct-pay permit and that  
27 knows at the time of purchase of a digital good, computer  
28 software delivered electronically, or a service that the  
29 digital good, computer software delivered electronically, or  
30 service will be concurrently available for use in more than  
31 one jurisdiction shall deliver to the dealer a multiple points

1 of use exemption form (MPU exemption form) at the time of  
2 purchase.

3 1. Upon receipt of the MPU exemption form, the seller  
4 is relieved of all obligation to collect, pay, or remit the  
5 applicable tax, and the purchaser is obligated to collect,  
6 pay, or remit the applicable tax on a direct-pay basis.

7 2. A purchaser delivering the MPU exemption form may  
8 use any reasonable, but consistent and uniform, method of  
9 apportionment which is supported by the purchaser's business  
10 records as they exist at the time of the consummation of the  
11 sale.

12 3. The MPU exemption form remains in effect for all  
13 future sales by the seller to the purchaser, except as to the  
14 subsequent sale's specific apportionment that is governed by  
15 the principle of subparagraph 2. and the facts existing at the  
16 time of the sale, until the MPU exemption form is revoked in  
17 writing.

18 4. A holder of a direct-pay permit is not required to  
19 deliver an MPU exemption form to the seller. A direct-pay  
20 permitholder shall follow the provisions of subparagraph 2. in  
21 apportioning the tax due on a digital good or a service that  
22 will be concurrently available for use in more than one  
23 jurisdiction.

24 (b)1. Notwithstanding subsection (3), a purchaser of  
25 direct mail which is not a holder of a direct-pay permit shall  
26 provide to the seller in conjunction with the purchase a  
27 direct mail form or information to show the jurisdictions to  
28 which the direct mail is delivered to recipients. Upon receipt  
29 of the direct mail form, the seller is relieved of all  
30 obligations to collect, pay, or remit the applicable tax, and  
31 the purchaser is obligated to pay or remit the applicable tax

1 on a direct-pay basis. A direct mail form remains in effect  
2 for all future sales of direct mail by the seller to the  
3 purchaser until it is revoked in writing.

4 2. Upon receipt of information from the purchaser  
5 showing the jurisdictions to which the direct mail is  
6 delivered to recipients, the seller shall collect the tax  
7 according to the delivery information provided by the  
8 purchaser. In the absence of bad faith, the seller is relieved  
9 of any further obligation to collect tax on any transaction  
10 for which the seller has collected tax pursuant to the  
11 delivery information provided by the purchaser.

12 3. If the purchaser of direct mail does not have a  
13 direct-pay permit and does not provide the seller with a  
14 direct mail form or delivery information as required by  
15 subparagraph 1., the seller shall collect the tax according to  
16 subparagraph (3)(d)5. This paragraph does not limit a  
17 purchaser's obligation for sales or use tax to any state to  
18 which the direct mail is delivered.

19 4. If a purchaser of direct mail provides the seller  
20 with documentation of direct-pay authority, the purchaser is  
21 not required to provide a direct mail form or delivery  
22 information to the seller. ~~A purchaser of printed materials~~  
23 ~~shall have sole responsibility for the taxes imposed by this~~  
24 ~~chapter on those materials when the printer of the materials~~  
25 ~~delivers them to the United States Postal Service for mailing~~  
26 ~~to persons other than the purchaser located within and outside~~  
27 ~~this state. Printers of materials delivered by mail to persons~~  
28 ~~other than the purchaser located within and outside this state~~  
29 ~~shall have no obligation or responsibility for the payment or~~  
30 ~~collection of any taxes imposed under this chapter on those~~  
31 ~~materials. However, printers are obligated to collect the~~

1 ~~taxes imposed by this chapter on printed materials when all,~~  
2 ~~or substantially all, of the materials will be mailed to~~  
3 ~~persons located within this state. For purposes of the~~  
4 ~~printer's tax collection obligation, there is a rebuttable~~  
5 ~~presumption that all materials printed at a facility are~~  
6 ~~mailed to persons located within the same state as that in~~  
7 ~~which the facility is located. A certificate provided by the~~  
8 ~~purchaser to the printer concerning the delivery of the~~  
9 ~~printed materials for that purchase or all purchases shall be~~  
10 ~~sufficient for purposes of rebutting the presumption created~~  
11 ~~herein.~~

12         ~~5.2.~~ The Department of Revenue is authorized to adopt  
13 rules and forms to implement the provisions of this paragraph.

14         Section 6. Subsections (1) and (2) of section 212.08,  
15 Florida Statutes, are amended to read:

16         212.08 Sales, rental, use, consumption, distribution,  
17 and storage tax; specified exemptions.--The sale at retail,  
18 the rental, the use, the consumption, the distribution, and  
19 the storage to be used or consumed in this state of the  
20 following are hereby specifically exempt from the tax imposed  
21 by this chapter.

22         (1) EXEMPTIONS; GENERAL GROCERIES.--

23         (a) Food and food ingredients products for human  
24 consumption are exempt from the tax imposed by this chapter.

25         (b) For the purpose of this chapter, as used in this  
26 subsection, the term "food and food ingredients products"  
27 means substances, whether in liquid, concentrated, solid,  
28 frozen, dried, or dehydrated form, which are sold for  
29 ingestion or chewing by humans and are consumed for their  
30 taste or nutritional value ~~edible commodities, whether~~  
31 ~~processed, cooked, raw, canned, or in any other form, which~~

1 ~~are generally regarded as food.~~ This includes, but is not  
2 limited to, all of the following:

3 ~~1. Cereals and cereal products, baked goods,~~  
4 ~~oleomargarine, meat and meat products, fish and seafood~~  
5 ~~products, frozen foods and dinners, poultry, eggs and egg~~  
6 ~~products, vegetables and vegetable products, fruit and fruit~~  
7 ~~products, spices, salt, sugar and sugar products, milk and~~  
8 ~~dairy products, and products intended to be mixed with milk.~~

9 ~~2. Natural fruit or vegetable juices or their~~  
10 ~~concentrates or reconstituted natural concentrated fruit or~~  
11 ~~vegetable juices, whether frozen or unfrozen, dehydrated,~~  
12 ~~powdered, granulated, sweetened or unsweetened, seasoned with~~  
13 ~~salt or spice, or unseasoned; coffee, coffee substitutes, or~~  
14 ~~cocoa; and tea, unless it is sold in a liquid form.~~

15 ~~1.3. Bakery products sold by bakeries, pastry shops,~~  
16 ~~or like establishments, if sold without eating utensils.~~  
17 Bakery products for purposes of this subsection include bread,  
18 rolls, buns, biscuits, bagels, croissants, pastries,  
19 doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars,  
20 cookies, and tortillas that do not have eating facilities.

21 2. Dietary supplements. The term "dietary supplements"  
22 means any product, other than tobacco, intended to supplement  
23 the diet which contains one or more of the following dietary  
24 ingredients: a vitamin; a mineral; an herb or other botanical;  
25 an amino acid; a dietary substance for use by humans to  
26 supplement the diet by increasing the total dietary intake; or  
27 a concentrate, metabolite, constituent, extract, or  
28 combination of any ingredient described in this subparagraph  
29 which is intended for ingestion in tablet, capsule, powder,  
30 softgel, gelcap, or liquid form or, if not intended for  
31 ingestion in such a form, is not represented as conventional



1 food and is not represented for use as a sole item of a meal  
2 or of the diet, and which is required to be labeled as a  
3 dietary supplement, identifiable by the "supplemental facts"  
4 box found on the label and as required pursuant to 21 C.F.R.  
5 s. 101.36.

6 (c) The exemption provided by this subsection does not  
7 apply:

8 ~~1. When the food products are sold as meals for~~  
9 ~~consumption on or off the premises of the dealer.~~

10 ~~2. When the food products are furnished, prepared, or~~  
11 ~~served for consumption at tables, chairs, or counters or from~~  
12 ~~trays, glasses, dishes, or other tableware, whether provided~~  
13 ~~by the dealer or by a person with whom the dealer contracts to~~  
14 ~~furnish, prepare, or serve food products to others.~~

15 ~~3. When the food products are ordinarily sold for~~  
16 ~~immediate consumption on the seller's premises or near a~~  
17 ~~location at which parking facilities are provided primarily~~  
18 ~~for the use of patrons in consuming the products purchased at~~  
19 ~~the location, even though such products are sold on a "take~~  
20 ~~out" or "to go" order and are actually packaged or wrapped and~~  
21 ~~taken from the premises of the dealer.~~

22 ~~4. To sandwiches sold ready for immediate consumption~~  
23 ~~on or off the seller's premises.~~

24 ~~5. When the food products are sold ready for immediate~~  
25 ~~consumption within a place, the entrance to which is subject~~  
26 ~~to an admission charge.~~

27 1.6. When the food and food ingredients products are  
28 sold as ~~hot~~ prepared food products. As used in this  
29 subparagraph, the term "prepared food" means food sold in a  
30 heated state or heated by the seller; two or more food  
31 ingredients mixed or combined by the seller for sale as a

1 single item; or food sold with eating utensils provided by the  
2 seller, including plates, knives, forks, spoons, glasses,  
3 cups, napkins, or straws. A plate does not include a container  
4 or packaging used to transport the food. Prepared food does  
5 not include food that is only cut, repackaged, or pasteurized  
6 by the seller and eggs, fish, meat, poultry, and foods  
7 containing these raw animal foods requiring cooking by the  
8 consumer as recommended by the Food and Drug Administration in  
9 chapter 3, part 401.11 of its food code so as to prevent  
10 food-borne illnesses. Prepared food, for purposes of this  
11 subparagraph, includes sandwiches sold for immediate  
12 consumption and a combination of hot and cold food items or  
13 components where a single price has been established for the  
14 combination and the food products are sold in such  
15 combination, such as a meal; a specialty dish or serving; a  
16 sandwich or pizza; an ice cream cone, sundae, or banana split;  
17 or food sold in an unheated state by weight or volume as a  
18 single item, including cold components or side items.

19 ~~2.7. To soft drinks, which include, but are not~~  
20 ~~limited to, any nonalcoholic beverage, any preparation or~~  
21 ~~beverage commonly referred to as a "soft drink," or any~~  
22 ~~noncarbonated drink made from milk derivatives or tea, when~~  
23 ~~sold in cans or similar containers. The term "soft drinks"~~  
24 means nonalcoholic beverages that contain natural or  
25 artificial sweeteners. Soft drinks do not include beverages  
26 that contain milk or milk products, soy, rice, or similar milk  
27 substitutes, or greater than 50 percent of vegetable or fruit  
28 juice by volume.

29 ~~8. To ice cream, frozen yogurt, and similar frozen~~  
30 ~~dairy or nondairy products in cones, small cups, or pints,~~  
31

1 ~~popsicles, frozen fruit bars, or other novelty items, whether~~  
2 ~~or not sold separately.~~

3 ~~9. To food prepared, whether on or off the premises,~~  
4 ~~and sold for immediate consumption. This does not apply to~~  
5 ~~food prepared off the premises and sold in the original sealed~~  
6 ~~container, or the slicing of products into smaller portions.~~

7 ~~3.10. When the food and food ingredients ~~products~~ are~~  
8 ~~sold through a vending machine, pushcart, motor vehicle, or~~  
9 ~~any other form of vehicle.~~

10 ~~4.11. To candy and any similar product regarded as~~  
11 ~~candy or confection, based on its normal use, as indicated on~~  
12 ~~the label or advertising thereof. The term "candy" means a~~  
13 ~~preparation of sugar, honey, or other natural or artificial~~  
14 ~~sweeteners in combination with chocolate, fruits, nuts, or~~  
15 ~~other ingredients or flavorings in the form of bars, drops, or~~  
16 ~~pieces. Candy does not include any preparation that contains~~  
17 ~~flour and does not require refrigeration.~~

18 ~~5. To tobacco.~~

19 ~~12. To bakery products sold by bakeries, pastry shops,~~  
20 ~~or like establishments that have eating facilities, except~~  
21 ~~when sold for consumption off the seller's premises.~~

22 ~~13. When food products are served, prepared, or sold~~  
23 ~~in or by restaurants, lunch counters, cafeterias, hotels,~~  
24 ~~taverns, or other like places of business.~~

25 ~~(d) As used in this subsection, the term:~~

26 ~~1. "For consumption off the seller's premises" means~~  
27 ~~that the food or drink is intended by the customer to be~~  
28 ~~consumed at a place away from the dealer's premises.~~

29 ~~2. "For consumption on the seller's premises" means~~  
30 ~~that the food or drink sold may be immediately consumed on the~~  
31 ~~premises where the dealer conducts his or her business. In~~

1 ~~determining whether an item of food is sold for immediate~~  
2 ~~consumption, there shall be considered the customary~~  
3 ~~consumption practices prevailing at the selling facility.~~

4 ~~3. "Premises" shall be construed broadly, and means,~~  
5 ~~but is not limited to, the lobby, aisle, or auditorium of a~~  
6 ~~theater; the seating, aisle, or parking area of an arena,~~  
7 ~~rink, or stadium; or the parking area of a drive in or outdoor~~  
8 ~~theater. The premises of a caterer with respect to catered~~  
9 ~~meals or beverages shall be the place where such meals or~~  
10 ~~beverages are served.~~

11 ~~4. "Hot Prepared food products" means those products,~~  
12 ~~items, or components which have been prepared for sale in a~~  
13 ~~heated condition and which are sold at any temperature that is~~  
14 ~~higher than the air temperature of the room or place where~~  
15 ~~they are sold. "Hot prepared food products," for the purposes~~  
16 ~~of this subsection, includes a combination of hot and cold~~  
17 ~~food items or components where a single price has been~~  
18 ~~established for the combination and the food products are sold~~  
19 ~~in such combination, such as a hot meal, a hot specialty dish~~  
20 ~~or serving, or a hot sandwich or hot pizza, including cold~~  
21 ~~components or side items.~~

22 ~~(d)(e)~~1. Food or drinks not exempt under paragraphs  
23 (a), (b), and (c), ~~and (d)~~ shall be exempt, notwithstanding  
24 those paragraphs, when purchased with food coupons or Special  
25 Supplemental Food Program for Women, Infants, and Children  
26 vouchers issued under authority of federal law.

27 2. This paragraph is effective only while federal law  
28 prohibits a state's participation in the federal food coupon  
29 program or Special Supplemental Food Program for Women,  
30 Infants, and Children if there is an official determination  
31

1 that state or local sales taxes are collected within that  
2 state on purchases of food or drinks with such coupons.

3 3. This paragraph does ~~shall~~ not apply to any food or  
4 drinks on which federal law permits ~~shall permit~~ sales taxes  
5 without penalty, such as termination of the state's  
6 participation.

7 (e) Dietary supplements that are sold as prepared food  
8 are not exempt.

9 (2) EXEMPTIONS; MEDICAL.--

10 (a) There shall be exempt from the tax imposed by this  
11 chapter:

12 1. Any drug;

13 2. Durable medical equipment, mobility enhancing  
14 equipment, or prosthetic device ~~any medical products and~~  
15 ~~supplies or medicine~~ dispensed according to an individual  
16 prescription or prescriptions ~~written by a prescriber~~  
17 ~~authorized by law to prescribe medicinal drugs;~~

18 3. Hypodermic needles; ~~hypodermic syringes;~~

19 4. Chemical compounds and test kits used for the  
20 diagnosis or treatment of ~~human~~ disease, illness, or injury  
21 and intended for one-time use;

22 5. Over-the-counter drugs ~~and common household~~  
23 ~~remedies recommended and generally sold for internal or~~  
24 ~~external use in the cure, mitigation, treatment, or prevention~~  
25 ~~of illness or disease in human beings, but not including~~  
26 grooming and hygiene products;

27 6. Band-aids, gauze, bandages, adhesive tape;

28 7. Hearing aids;

29 8. Dental prosthesis; or

30 9. Funerals.

31

1 Funeral directors shall pay tax on all tangible personal  
2 property used by them in their business. ~~cosmetics or toilet~~  
3 ~~articles, notwithstanding the presence of medicinal~~  
4 ~~ingredients therein, according to a list prescribed and~~  
5 ~~approved by the Department of Health, which list shall be~~  
6 ~~certified to the Department of Revenue from time to time and~~  
7 ~~included in the rules promulgated by the Department of~~  
8 ~~Revenue. There shall also be exempt from the tax imposed by~~  
9 ~~this chapter artificial eyes and limbs; orthopedic shoes;~~  
10 ~~prescription eyeglasses and items incidental thereto or which~~  
11 ~~become a part thereof; dentures; hearing aids; crutches;~~  
12 ~~prosthetic and orthopedic appliances; and funerals.~~ In  
13 addition, any items intended for one-time use which transfer  
14 essential optical characteristics to contact lenses are shall  
15 ~~be~~ exempt from the tax imposed by this chapter; however, this  
16 exemption applies shall apply only after \$100,000 of the tax  
17 imposed by this chapter on such items has been paid in any  
18 calendar year by a taxpayer who claims the exemption in such  
19 year. ~~Funeral directors shall pay tax on all tangible personal~~  
20 ~~property used by them in their business.~~

21 (b) For the purposes of this subsection, the term:

22 1. "Drug" means a compound, substance, or preparation,  
23 and any component of a compound, substance, or preparation,  
24 other than food and food ingredients, dietary supplements, and  
25 alcoholic beverages, which is:

26 a. Recognized in the official United States  
27 Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
28 United States, or official National Formulary, or the  
29 supplement to any of them;

30 b. Intended for use in the diagnosis, cure,  
31 mitigation, treatment, or prevention of disease; or

1           c. Intended to affect the structure or any function of  
2 the body.

3           2. "Durable medical equipment" means equipment,  
4 including repair and replacement parts to such equipment, but  
5 excluding mobility-enhancing equipment, which can withstand  
6 repeated use, is primarily and customarily used to serve a  
7 medical purpose, generally is not useful to a person in the  
8 absence of illness or injury, and is not worn on or in the  
9 body.

10           3. "Mobility-enhancing equipment" means equipment,  
11 including repair and replacement parts to such equipment, but  
12 excluding durable medical equipment, which:

13           a. Is primarily and customarily used to provide or  
14 increase the ability to move from one place to another and  
15 which is appropriate for use either in a home or a motor  
16 vehicle;

17           b. Is not generally used by persons with normal  
18 mobility; and

19           c. Does not include any motor vehicle or any equipment  
20 on a motor vehicle normally provided by a motor vehicle  
21 manufacturer.

22           4. "Prosthetic device" means a replacement,  
23 corrective, or supportive device, including repair or  
24 replacement parts to such equipment, other than a hearing aid  
25 or a dental prosthesis, which is worn on or in the body to:

26           a. Artificially replace a missing portion of the body;

27           b. Prevent or correct physical deformity or  
28 malfunction; or

29           c. Support a weak or deformed portion of the body.

30           5. "Grooming and hygiene products" mean soaps and  
31 cleaning solutions, shampoo, toothpaste, mouthwash,

1 antiperspirants, and suntan lotions and screens, regardless of  
2 whether the items meet the definition of an over-the-counter  
3 drug.

4       6. "Over-the-counter drug" means a drug the packaging  
5 for which contains a label that identifies the product as a  
6 drug as required by 21 C.F.R. s. 201.66. The over-the-counter  
7 drug label includes a drug facts panel or a statement of the  
8 active ingredients, with a list of those ingredients contained  
9 in the compound, substance, or preparation.~~"Prosthetic and~~  
10 ~~orthopedic appliances" means any apparatus, instrument,~~  
11 ~~device, or equipment used to replace or substitute for any~~  
12 ~~missing part of the body, to alleviate the malfunction of any~~  
13 ~~part of the body, or to assist any disabled person in leading~~  
14 ~~a normal life by facilitating such person's mobility. Such~~  
15 ~~apparatus, instrument, device, or equipment shall be exempted~~  
16 ~~according to an individual prescription or prescriptions~~  
17 ~~written by a physician licensed under chapter 458, chapter~~  
18 ~~459, chapter 460, chapter 461, or chapter 466, or according to~~  
19 ~~a list prescribed and approved by the Department of Health,~~  
20 ~~which list shall be certified to the Department of Revenue~~  
21 ~~from time to time and included in the rules promulgated by the~~  
22 ~~Department of Revenue.~~

23       2. ~~"Cosmetics" means articles intended to be rubbed,~~  
24 ~~poured, sprinkled, or sprayed on, introduced into, or~~  
25 ~~otherwise applied to the human body for cleansing,~~  
26 ~~beautifying, promoting attractiveness, or altering the~~  
27 ~~appearance and also means articles intended for use as a~~  
28 ~~compound of any such articles, including, but not limited to,~~  
29 ~~cold creams, suntan lotions, makeup, and body lotions.~~

30       3. ~~"Toilet articles" means any article advertised or~~  
31 ~~held out for sale for grooming purposes and those articles~~



1 ~~that are customarily used for grooming purposes, regardless of~~  
2 ~~the name by which they may be known, including, but not~~  
3 ~~limited to, soap, toothpaste, hair spray, shaving products,~~  
4 ~~colognes, perfumes, shampoo, deodorant, and mouthwash.~~

5 7.4. "Prescription" means an order, formula, or recipe  
6 issued in any form of oral, written, electronic, or other  
7 means of transmission by a duly licensed practitioner  
8 authorized by chapter 458, chapter 459, chapter 460, chapter  
9 461, or chapter 466. The term also includes an orally  
10 transmitted order by the lawfully designated agent of such  
11 practitioner. The term also includes an order written or  
12 transmitted by a practitioner licensed to practice in a  
13 jurisdiction other than this state, but only if the pharmacist  
14 called upon to dispense the order determines, in the exercise  
15 of his or her professional judgment, that the order is valid  
16 and necessary for the treatment of a chronic or recurrent  
17 illness. ~~includes any order for drugs or medicinal supplies~~  
18 ~~written or transmitted by any means of communication by a duly~~  
19 ~~licensed practitioner authorized by the laws of the state to~~  
20 ~~prescribe such drugs or medicinal supplies and intended to be~~  
21 ~~dispensed by a pharmacist. The term also includes an orally~~  
22 ~~transmitted order by the lawfully designated agent of such~~  
23 ~~practitioner. The term also includes an order written or~~  
24 ~~transmitted by a practitioner licensed to practice in a~~  
25 ~~jurisdiction other than this state, but only if the pharmacist~~  
26 ~~called upon to dispense such order determines, in the exercise~~  
27 ~~of his or her professional judgment, that the order is valid~~  
28 ~~and necessary for the treatment of a chronic or recurrent~~  
29 ~~illness. The term also includes a pharmacist's order for a~~  
30 ~~product selected from the formulary created pursuant to s.~~  
31 ~~465.186. A prescription may be retained in written form, or~~

1 ~~the pharmacist may cause it to be recorded in a data~~  
2 ~~processing system, provided that such order can be produced in~~  
3 ~~printed form upon lawful request.~~

4 (c) Chlorine is ~~shall~~ not be exempt from the tax  
5 imposed by this chapter when used for the treatment of water  
6 in swimming pools.

7 ~~(d) Lithotripters are exempt.~~

8 ~~(d)(e)~~ Human organs are exempt.

9 ~~(f) Sales of drugs to or by physicians, dentists,~~  
10 ~~veterinarians, and hospitals in connection with medical~~  
11 ~~treatment are exempt.~~

12 ~~(g) Medical products and supplies used in the cure,~~  
13 ~~mitigation, alleviation, prevention, or treatment of injury,~~  
14 ~~disease, or incapacity which are temporarily or permanently~~  
15 ~~incorporated into a patient or client by a practitioner of the~~  
16 ~~healing arts licensed in the state are exempt.~~

17 ~~(h) The purchase by a veterinarian of commonly~~  
18 ~~recognized substances possessing curative or remedial~~  
19 ~~properties which are ordered and dispensed as treatment for a~~  
20 ~~diagnosed health disorder by or on the prescription of a duly~~  
21 ~~licensed veterinarian, and which are applied to or consumed by~~  
22 ~~animals for alleviation of pain or the cure or prevention of~~  
23 ~~sickness, disease, or suffering are exempt. Also exempt are~~  
24 ~~the purchase by a veterinarian of antiseptics, absorbent~~  
25 ~~cotton, gauze for bandages, lotions, vitamins, and worm~~  
26 ~~remedies.~~

27 ~~(i) X ray opaques, also known as opaque drugs and~~  
28 ~~radiopaque, such as the various opaque dyes and barium~~  
29 ~~sulphate, when used in connection with medical X rays for~~  
30 ~~treatment of bodies of humans and animals, are exempt.~~

31

1           ~~(e)(j)~~ Parts, special attachments, special lettering,  
2 and other like items that are added to or attached to tangible  
3 personal property so that a handicapped person can use them  
4 are exempt when such items are purchased by a person pursuant  
5 to an individual prescription.

6           ~~(f)(k)~~ This subsection shall be strictly construed and  
7 enforced.

8           Section 7. Section 212.095, Florida Statutes, is  
9 amended to read:

10           212.095 Refunds.--

11           (1) No exemption granted on a refund basis pursuant to  
12 this chapter is authorized except as provided in this section.

13           ~~(2)(a) No person may secure a refund under this~~  
14 ~~chapter unless such person is the holder of an unrevoked~~  
15 ~~refund permit issued by the department before the purchase for~~  
16 ~~which a refund is sought, which permit shall be numbered and~~  
17 ~~issued annually.~~

18           ~~(b) To procure a permit, a person must file with the~~  
19 ~~department an application, on forms furnished by the~~  
20 ~~department, stating that he or she is entitled to a refund~~  
21 ~~according to the provisions of this chapter and that he or she~~  
22 ~~intends to file an application for refund for the current~~  
23 ~~calendar year, and must furnish the department such other~~  
24 ~~information as the department requests.~~

25           ~~(c) No person may in any event be allowed a refund~~  
26 ~~unless he or she has filed the application provided for in~~  
27 ~~paragraph (b) with the department. A permit shall be effective~~  
28 ~~on the date issued by the department.~~

29           ~~(d) If an applicant for a refund permit has violated~~  
30 ~~any provision of this section or any regulation pursuant~~  
31 ~~hereto, or has been convicted of bribery, theft, or false~~

1 ~~swearing within the period of 5 years preceding the~~  
2 ~~application, or if the department has evidence of the~~  
3 ~~financial irresponsibility of the applicant, the department~~  
4 ~~may require the applicant to execute a corporate surety bond~~  
5 ~~of \$1,000 to be approved by the department, conditioned upon~~  
6 ~~the payment of all taxes, penalties, and fines for which such~~  
7 ~~applicant may become liable under this chapter.~~

8       (2)~~(3)~~(a) When a sale is made to a person who claims  
9 to be entitled to a refund under this section, the seller  
10 shall make out a sales invoice, which shall contain the  
11 following information:

- 12           1. The name and business address of the purchaser.
- 13           2. A description of the item or services sold.
- 14           3. The date on which the purchase was made.
- 15           4. The price and amount of tax paid for the item or  
16 services.
- 17           5. The name and place of business of the seller at  
18 which the sale was made.

19       ~~6. The refund permit number of the purchaser.~~

20       (b) The sales invoice shall be retained by the  
21 purchaser for attachment to his or her application for a  
22 refund, as a part thereof. No refund will be allowed unless  
23 the seller has executed such an invoice and unless proof of  
24 payment of the taxes for which the refund is claimed is  
25 attached. The department may refuse to grant a refund if the  
26 invoice is incomplete and fails to contain the full  
27 information required in this subsection.

28       (c) No person may execute a sales invoice, as  
29 described in paragraph (a), except a dealer duly registered  
30 pursuant to this chapter, or an authorized agent thereof.

31

1           ~~(3)(4)~~(a) No refund may be authorized unless a sworn  
2 application therefor containing the information required in  
3 this section is filed with the department not later than 30  
4 days immediately following the quarter for which the refund is  
5 claimed. When a claim is filed after such 30 days and a  
6 justified excuse for late filing is presented to the  
7 department and the last preceding claim was filed on time,  
8 such late filing may be accepted through 60 days following the  
9 quarter. No refund will be authorized unless the amount due  
10 is for \$5 or more in any quarter and unless application is  
11 made upon forms prescribed by the department.

12           (b) Claims shall be filed and paid for each calendar  
13 quarter. The department shall deduct a fee of \$2 for each  
14 claim, which fee shall be deposited in the General Revenue  
15 Fund.

16           (c) Refund application forms shall include at a  
17 minimum the following information:

18           1. The name and address of the person claiming the  
19 refund.

20           ~~2. The refund permit number of such person.~~

21           2.3. The location at which the items or services for  
22 which a refund is claimed are used.

23           ~~3.4.~~ A description of each such item or service and  
24 the purpose for which such item or service was acquired.

25           ~~4.5.~~ Copies of the sales invoices of items or services  
26 for which a refund is being claimed.

27           ~~(4)(5)~~ The right to receive any refund under the  
28 provisions of this section is not assignable, except to the  
29 executor or administrator, or to the receiver, trustee in  
30 bankruptcy, or assignee in an insolvency proceeding, of the  
31 person entitled to the refund.

1           ~~(5)(6)~~(a) Each registered dealer shall, in accordance  
2 with the requirements of the department, keep at his or her  
3 principal place of business in this state or at the location  
4 where the sale is made a complete record or duplicate sales  
5 tickets of all items or services sold by the registered dealer  
6 for which a refund provided in this section may be claimed,  
7 which records shall contain the information required in  
8 paragraph~~(2)(a)~~~~(3)(a)~~.

9           (b) Every person applying for ~~to whom~~ a refund ~~permit~~  
10 ~~has been issued~~ under this section shall, in accordance with  
11 the requirements of the department, keep at his or her  
12 residence or principal place of business in this state a  
13 record of each purchase for which a refund is claimed,  
14 including the information required in paragraph~~(2)(a)~~~~(3)(a)~~.

15           (c) The records required to be kept under this  
16 subsection shall at all reasonable hours be subject to audit  
17 or inspection by the department or by any person duly  
18 authorized by it. Such records shall be preserved and may not  
19 be destroyed until 3 years after the date the item to which  
20 they relate was sold or purchased.

21           ~~(6)(7)~~ Agents of the department are authorized to go  
22 upon the premises of any refund applicant ~~permitholder~~, or  
23 duly authorized agent thereof, to make an inspection to  
24 ascertain any matter connected with the operation of this  
25 section or the enforcement hereof. However, no agent may enter  
26 the dwelling of any person without the consent of the occupant  
27 or authority from a court of competent jurisdiction.

28           ~~(7)(8)~~ If any taxes are refunded erroneously, the  
29 department shall advise the payee by registered mail of the  
30 erroneous refund. If the payee fails to reimburse the state  
31 within 15 days after the receipt of the letter, an action may

1 be instituted by the department against such payee in the  
2 circuit court, and the department shall recover from the payee  
3 the amount of the erroneous refund plus a penalty of 25  
4 percent.

5 ~~(8)(9)~~ A No person may not shall:

6 (a) Knowingly make a false or fraudulent statement ~~in~~  
7 ~~an application for a refund permit or~~ in an application for a  
8 refund of any taxes under this section;

9 (b) Fraudulently obtain a refund of such taxes; or

10 (c) Knowingly aid or assist in making any such false  
11 or fraudulent statement or claim.

12 ~~(10) The refund permit of any person who violates any~~  
13 ~~provision of this section shall be revoked by the department~~  
14 ~~and may not be reissued until 2 years have elapsed from the~~  
15 ~~date of such revocation. The refund permit of any person who~~  
16 ~~violates any other provision of this chapter may be suspended~~  
17 ~~by the department for any period, in its discretion, not~~  
18 ~~exceeding 6 months.~~

19 ~~(9)(11) Refund permits and refund application forms~~  
20 must shall include instructions for dealers and purchasers as  
21 to the relevant requirements of this section.

22 Section 8. Section 212.094, Florida Statutes, is  
23 created to read:

24 212.094 Purchaser requests for refunds from dealers.--

25 (1) If a purchaser seeks a refund of or credit from a  
26 dealer for a tax collected under this chapter by that dealer,  
27 the purchaser must submit a written request for the refund or  
28 credit to the dealer in accordance with this section. The  
29 request must contain all the information necessary for the  
30 dealer to determine the validity of the purchaser's request.

1           (2) The purchaser may not take any other action  
2 against the dealer with respect to the requested refund or  
3 credit until the dealer has had 60 days following receipt of a  
4 completed request in which to respond.

5           (3) This section does not change the law regarding  
6 standing to claim a refund.

7           Section 9. Subsection (3) of section 212.17, Florida  
8 Statutes, is amended to read:

9           212.17 Credits for returned goods, rentals, or  
10 admissions; goods acquired for dealer's own use and  
11 subsequently resold; additional powers of department.--

12           (3) A dealer who has paid the tax imposed by this  
13 chapter on tangible personal property or services may take a  
14 credit or obtain a refund for any tax paid by the dealer on  
15 the unpaid balance due on worthless accounts within 12 months  
16 following the month in which the bad debt has been charged off  
17 for federal income tax purposes. A dealer who has paid the tax  
18 imposed by this chapter on tangible personal property or  
19 services and who is not required to file federal income tax  
20 returns may take a credit or obtain a refund for any tax paid  
21 by the dealer on the unpaid balance due on worthless accounts  
22 within 12 months following the month in which the bad debt is  
23 written off as uncollectible in the dealer's books and records  
24 and would be eligible for a bad-debt deduction for federal  
25 income tax purposes if the dealer was required to file a  
26 federal income tax return.

27           (a) A dealer that is taking a credit or obtaining a  
28 refund on worthless accounts shall base the bad-debt-recovery  
29 calculation in accordance with 26 U.S.C. s. 166.

30           (b) Notwithstanding paragraph (a), the amount  
31 calculated pursuant to 26 U.S.C. s. 166 shall be adjusted to



1 exclude financing charges or interest; sales or use taxes  
2 charged on the purchase price; uncollectible amounts on  
3 property that remains in the possession of the seller until  
4 the full purchase price is paid; expenses incurred in  
5 attempting to collect any debt; and repossessed property.

6 (c) When the amount of bad debt exceeds the amount of  
7 taxable sales for the period during which the bad debt is  
8 written off, a refund claim must be filed, notwithstanding s.  
9 215.26(2), within 3 years after the due date of the return on  
10 which the bad debt could first be claimed.

11 (d) If any accounts so charged off for which a credit  
12 or refund has been obtained are thereafter in whole or in part  
13 paid to the dealer, the amount so paid shall be included in  
14 the first return filed after such collection and the tax paid  
15 accordingly.

16 (e) If filing responsibilities have been assumed by a  
17 certified service provider, the certified service provider  
18 shall claim, on behalf of the seller, any bad-debt allowance  
19 provided by this section. The certified service provider must  
20 credit or refund to the seller the full amount of any bad-debt  
21 allowance or refund received.

22 (f) For the purposes of reporting a payment received  
23 on a previously claimed bad debt, any payments made on a debt  
24 or account are applied first proportionally to the taxable  
25 price of the property or service and the sales tax thereon,  
26 and secondly to interest, service charges, and any other  
27 charges.

28 (g) In situations in which the books and records of  
29 the party claiming the bad-debt allowance support an  
30 allocation of the bad debts among states that are members of  
31

1 the Streamlined Sales and Use Tax Agreement, the allocation is  
2 permitted among those states.

3 Section 10. Section 213.052, Florida Statutes, is  
4 created to read:

5 213.052 Notice of state rate changes.--

6 (1) A sales or use tax rate change imposed under  
7 chapter 212 is effective on January 1, April 1, July 1, or  
8 October 1. The Department of Revenue shall provide notice of  
9 such rate change to all affected sellers 90 days before the  
10 effective date of the rate change.

11 (2) Failure of a seller to receive notice does not  
12 relieve the seller of its obligation to collect sales or use  
13 tax.

14 Section 11. Section 213.0521, Florida Statutes, is  
15 created to read:

16 213.0521 Effective date of state rate changes.--The  
17 effective date for services covering a period starting before  
18 and ending after the statutory effective date is as follows:

19 (1) For a rate increase, the new rate applies to the  
20 first billing period starting on or after the effective date.

21 (2) For a rate decrease, the new rate applies to bills  
22 rendered on or after the effective date.

23 Section 12. Subsection (11) is added to section  
24 213.21, Florida Statutes, to read:

25 213.21 Informal conferences; compromises.--

26 (11) Amnesty shall be provided for uncollected or  
27 unpaid sales or use tax to a seller who registers to pay or to  
28 collect and remit applicable sales or use tax in accordance  
29 with the terms of the Streamlined Sales and Use Tax Agreement  
30 authorized under s. 213.256, if the seller was not registered  
31 with the Department of Revenue in the 12-month period

1 preceding the effective date of participation in the agreement  
2 by this state.

3 (a) The amnesty precludes assessment for uncollected  
4 or unpaid sales or use tax, together with penalty or interest  
5 for sales made during the period the seller was not registered  
6 with the Department of Revenue, if registration occurs within  
7 12 months after the effective date of this state's  
8 participation in the agreement.

9 (b) The amnesty is not available to a seller with  
10 respect to any matter for which the seller received notice of  
11 the commencement of an audit if the audit is not yet finally  
12 resolved, including any related administrative and judicial  
13 processes.

14 (c) The amnesty is not available for sales or use  
15 taxes already paid or remitted to the state or to taxes  
16 collected by the seller.

17 (d) The amnesty is fully effective, absent the  
18 seller's fraud or intentional misrepresentation of a material  
19 fact, as long as the seller continues registration and  
20 continues payment or collection and remittance of applicable  
21 sales or use taxes for at least 36 months.

22 (e) The amnesty is applicable only to sales or use  
23 taxes due from a seller in its capacity as a seller and not to  
24 sales or use taxes due from a seller in its capacity as a  
25 buyer.

26 Section 13. Subsections (1) and (7) of section  
27 213.256, Florida Statutes, are amended, present subsections  
28 (8), (9), and (10) of that section are renumbered as  
29 subsections (11), (12), and (13), respectively, and new  
30 subsections (8), (9), (10), and (14) are added to that  
31 section, to read:

1           213.256 Simplified Sales and Use Tax Administration  
2 Act.--  
3           (1) As used in this section and s. 213.2567 ~~this~~  
4 ~~section~~, the term:  
5           (a) "Department" means the Department of Revenue.  
6           (b) "Agent" means a person appointed by a seller to  
7 represent the seller before the member states.  
8           (c)~~(b)~~ "Agreement" means the Streamlined Sales and Use  
9 Tax Agreement as amended and adopted on November 12, 2002  
10 ~~January 27, 2001~~, by the Executive Committee of the National  
11 Conference of State Legislatures.  
12           (d)~~(c)~~ "Certified automated system" means software  
13 certified jointly by the states that are signatories to the  
14 agreement to calculate the tax imposed by each jurisdiction on  
15 a transaction, determine the amount of tax to remit to the  
16 appropriate state, and maintain a record of the transaction.  
17           (e)~~(d)~~ "Certified service provider" means an agent  
18 certified under jointly by the states that are signatories to  
19 the agreement to perform all of the seller's sales tax  
20 functions other than the seller's obligation to remit tax on  
21 its own purchases.  
22           (f) "Model 1 seller" means a seller that has selected  
23 a certified service provider as its agent to perform all the  
24 seller's sales and use tax functions other than the seller's  
25 obligation to remit tax on its own purchases.  
26           (g) "Model 2 seller" means a seller that has selected  
27 a certified automated system to perform part of its sales and  
28 use tax functions, but retains responsibility for remitting  
29 the tax.  
30           (h) "Model 3 seller" means a seller that has sales in  
31 at least five member states, has total annual sales revenue of

1 at least \$500 million, has a proprietary system that  
2 calculates the amount of tax due each jurisdiction, and has  
3 entered into a performance agreement with the member states  
4 which establishes a tax performance standard for the seller.  
5 As used in this paragraph, a seller includes an affiliated  
6 group of sellers using the same proprietary system.

7 ~~(i)(e)~~ "Person" means an individual, trust, estate,  
8 fiduciary, partnership, limited liability company, limited  
9 liability partnership, corporation, or any other legal entity.

10 (j) "Registered under this agreement" means  
11 registration by a seller with the member states under the  
12 central registration system.

13 ~~(k)(f)~~ "Sales tax" means the tax levied under chapter  
14 212.

15 ~~(l)(g)~~ "Seller" means any person making sales, leases,  
16 or rentals of personal property or services.

17 ~~(m)(h)~~ "State" means any state of the United States  
18 and the District of Columbia.

19 ~~(n)(i)~~ "Use tax" means the tax levied under chapter  
20 212.

21 (7)(a) The agreement authorized by this act binds and  
22 inures only to the benefit of this state and the other member  
23 states. No person, other than a member state, is an intended  
24 beneficiary of the agreement. Any benefit to a person other  
25 than a state is established by the laws of this state and of  
26 other member states and not by the terms of the agreement.

27 (b) Consistent with paragraph (a), no person has any  
28 cause of action or defense under the agreement or by virtue of  
29 this state's approval of the agreement. No person may  
30 challenge, in any action brought under any provision of law,  
31 any action or inaction by any department, agency, or other

1 instrumentality of this state, or of any political subdivision  
2 of this state, on the ground that the action or inaction is  
3 inconsistent with the agreement.

4 (c) No law of this state, or the application thereof,  
5 may be declared invalid as to any person or circumstance on  
6 the ground that the provision or application is inconsistent  
7 with the agreement.

8 (d) The determinations pertaining to the agreement  
9 which are made by the member states are final when rendered  
10 and are not subject to any protest, appeal, or review.

11 (8) Authority to administer the agreement rests with  
12 the governing board comprised of representatives of each  
13 member state. This state shall be represented by three  
14 delegates, one appointed by the President of the Senate, one  
15 appointed by the Speaker of the House of Representatives, and  
16 the executive director of the department or his or her  
17 designee.

18 (9) With respect to each member state, the agreement  
19 continues in full force and effect until a member state  
20 withdraws its membership or is expelled. A member state's  
21 withdrawal or expulsion is not effective until the first day  
22 of a calendar quarter after a minimum of 60 days' notice. A  
23 member state shall submit notice of its intent to withdraw  
24 from the agreement to the governing board and the chief  
25 executive of each member state's tax agency. The member state  
26 shall provide public notice of its intent to withdraw and post  
27 its notice of intent to withdraw from the agreement to the  
28 governing board and the chief executive of each member state's  
29 tax agency. The member state shall provide public notice of  
30 its intent to withdraw and post its notice of intent to  
31 withdraw on its Internet website. The withdrawal by or

1 expulsion of a state does not affect the validity of the  
2 agreement among other member states. A state that withdraws or  
3 is expelled from the agreement remains liable for its share of  
4 any financial or contractual obligations that were incurred by  
5 the governing board before the effective date of that state's  
6 withdrawal or expulsion. The appropriate share of any  
7 financial or contractual obligation shall be determined by the  
8 state and the governing board in good faith based on the  
9 relative benefits received and burdens incurred by the  
10 parties.

11 (10) Sanctions may be imposed upon a member state that  
12 is found to be out of compliance with the agreement, which  
13 include expulsion or other penalties as determined by the  
14 governing board.

15 (14) Each member state shall annually recertify that  
16 it is in compliance with the agreement. Each member state  
17 shall make a recertification to the governing board on or  
18 before August 1 of each year after the year of the state's  
19 entry. In its annual recertification, the state shall include  
20 any changes in its statutes, rules, or regulations or other  
21 authorities that could affect its compliance with the terms of  
22 the agreement. The recertification shall be signed by the  
23 executive director of the department. A member state that  
24 cannot recertify its compliance with the agreement shall  
25 submit a statement of noncompliance to the governing board.  
26 The statement of noncompliance must include any action or  
27 decision that takes the state out of compliance with the  
28 agreement and the steps it will take to return to compliance.  
29 Each member state shall post its annual recertification or  
30 statement of noncompliance on that state's Internet website.

31

1           Section 14. Section 213.2567, Florida Statutes, is  
2 created to read:

3           213.2567 Simplified Sales and Use Tax registration,  
4 certification, liability, and audit.--

5           (1) A seller that registers under the agreement agrees  
6 to collect and remit sales and use taxes for all taxable sales  
7 into the member states, including member states joining after  
8 the seller's registration. Withdrawal or revocation of a  
9 member state does not relieve a seller of its responsibility  
10 to remit taxes previously or subsequently collected on behalf  
11 of the state.

12           (a) When registering, the seller may select a model 1,  
13 model 2, or model 3 method of remittance or other method  
14 allowed by state law to remit the taxes collected.

15           (b) A seller may be registered by an agent. Such an  
16 appointment must be in writing and submitted to a member  
17 state.

18           (2)(a) A certified service provider is the agent of a  
19 model 1 seller with whom the certified service provider has  
20 contracted for the collection and remittance of sales and use  
21 taxes. As the model 1 seller's agent, the certified service  
22 provider is liable for sales and use tax due each member state  
23 on all sales transactions it processes for the model 1 seller,  
24 except as set out in paragraph (b).

25           (b) A model 1 seller is not liable to the state for  
26 sales or use tax due on transactions processed by the  
27 certified service provider unless the model 1 seller has  
28 misrepresented the type of items it sells or has committed  
29 fraud. In the absence of probable cause to believe that the  
30 model 1 seller has committed fraud or made a material  
31 misrepresentation, the model 1 seller is not subject to audit



1 on the transactions processed by the certified service  
2 provider. A model 1 seller is subject to audit for  
3 transactions that have not been processed by the certified  
4 service provider. The member states acting jointly may perform  
5 a system check of the model 1 seller and review the model 1  
6 seller's procedures to determine if the certified service  
7 provider's system is functioning properly and to determine the  
8 extent to which the model 1 seller's transactions are being  
9 processed by the certified service provider.

10 (3) A person that provides a certified automated  
11 system is responsible for the proper functioning of that  
12 system and is liable to the state for underpayments of tax  
13 attributable to errors in the functioning of the certified  
14 automated system. A model 2 seller that uses a certified  
15 automated system remains responsible and is liable to the  
16 state for reporting and remitting tax.

17 (4) A model 3 seller is liable for the failure of the  
18 proprietary system to meet the performance standard.

19 (5) The governing board may certify a person as a  
20 certified service provider if the person meets all of the  
21 following requirements:

22 (a) Uses a certified automated system;

23 (b) Integrates its certified automated system with the  
24 system of a seller for whom the person collects tax so that  
25 the tax due on a sale is determined at the time of the sale;

26 (c) Agrees to remit the taxes it collects at the time  
27 and in the manner specified by the member states;

28 (d) Agrees to file returns on behalf of the sellers  
29 for whom it collects tax;

30 (e) Agrees to protect the privacy of tax information  
31 it obtains in accordance with s. 213.053; and

1           (f) Enters into a contract with the member states and  
2 agrees to comply with the terms of the contract.

3           (6) The governing board may certify a software program  
4 as a certified automated system if the governing board  
5 determines that the program meets all of the following  
6 requirements:

7           (a) Determines the applicable state and local sales  
8 and use tax rate for a transaction in accordance with s.  
9 212.06(3) and (4);

10           (b) Determines whether or not an item is exempt from  
11 tax;

12           (c) Determines the amount of tax to be remitted for  
13 each taxpayer for a reporting period;

14           (d) Can generate reports and returns as required by  
15 the governing board; and

16           (e) Meets any other requirement set by the governing  
17 board.

18           (7) The governing board may establish one or more  
19 sales tax performance standards for model 3 sellers that meet  
20 the eligibility criteria set by the governing board and that  
21 developed a proprietary system to determine the amount of  
22 sales and use tax due on transactions.

23           (8) Disclosure of information necessary under this  
24 section must be made according to a written agreement between  
25 the executive director of the department or his or her  
26 designee and the certified service provider. The certified  
27 service provider is bound by the same requirements of  
28 confidentiality as the department. Breach of confidentiality  
29 is a misdemeanor of the first degree, punishable as provided  
30 in s. 775.082 or s. 775.083.

31

1           Section 15. Paragraph (c) of subsection (2) and  
2 paragraph (c) of subsection (3) of section 212.055, Florida  
3 Statutes, are amended to read:

4           212.055 Discretionary sales surtaxes; legislative  
5 intent; authorization and use of proceeds.--It is the  
6 legislative intent that any authorization for imposition of a  
7 discretionary sales surtax shall be published in the Florida  
8 Statutes as a subsection of this section, irrespective of the  
9 duration of the levy. Each enactment shall specify the types  
10 of counties authorized to levy; the rate or rates which may be  
11 imposed; the maximum length of time the surtax may be imposed,  
12 if any; the procedure which must be followed to secure voter  
13 approval, if required; the purpose for which the proceeds may  
14 be expended; and such other requirements as the Legislature  
15 may provide. Taxable transactions and administrative  
16 procedures shall be as provided in s. 212.054.

17           (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

18           (c) Pursuant to s. 212.054(5) ~~s. 212.054(4)~~, the  
19 proceeds of the surtax levied under this subsection shall be  
20 distributed to the county and the municipalities within such  
21 county in which the surtax was collected, according to:

22           1. An interlocal agreement between the county  
23 governing authority and the governing bodies of the  
24 municipalities representing a majority of the county's  
25 municipal population, which agreement may include a school  
26 district with the consent of the county governing authority  
27 and the governing bodies of the municipalities representing a  
28 majority of the county's municipal population; or

29           2. If there is no interlocal agreement, according to  
30 the formula provided in s. 218.62.

31

1 Any change in the distribution formula must take effect on the  
2 first day of any month that begins at least 60 days after  
3 written notification of that change has been made to the  
4 department.

5 (3) SMALL COUNTY SURTAX.--

6 (c) Pursuant to s. 212.054(5) ~~s. 212.054(4)~~, the  
7 proceeds of the surtax levied under this subsection shall be  
8 distributed to the county and the municipalities within the  
9 county in which the surtax was collected, according to:

10 1. An interlocal agreement between the county  
11 governing authority and the governing bodies of the  
12 municipalities representing a majority of the county's  
13 municipal population, which agreement may include a school  
14 district with the consent of the county governing authority  
15 and the governing bodies of the municipalities representing a  
16 majority of the county's municipal population; or

17 2. If there is no interlocal agreement, according to  
18 the formula provided in s. 218.62.

19

20 Any change in the distribution formula shall take effect on  
21 the first day of any month that begins at least 60 days after  
22 written notification of that change has been made to the  
23 department.

24 Section 16. Subsection (6) of section 212.0596,  
25 Florida Statutes, is repealed.

26 Section 17. It is the intent of the Legislature to  
27 further amend chapter 212, Florida Statutes, to make the  
28 changes necessary to be in compliance with the provisions of  
29 the Streamlined Sales and Use Tax Agreement which take effect  
30 on December 31, 2005, and to address the prohibition on  
31 multiple state rates in a revenue-neutral manner.

1           Section 18. Emergency rules.--The executive director  
2 of the Department of Revenue is authorized, and all conditions  
3 are deemed met, to adopt emergency rules, under sections  
4 120.536(1) and 120.54(4), Florida Statutes, to implement this  
5 act. Notwithstanding any other law, the emergency rules shall  
6 remain effective for 6 months after the date of adoption and  
7 may be renewed during the pendency of procedures to adopt  
8 rules addressing the subject of the emergency rules.

9           Section 19. This act shall take effect January 1,  
10 2006.

11  
12 \*\*\*\*\*

13 SENATE SUMMARY

14 Revises various provisions of the Streamlined Sales and  
15 Use Tax Agreement. Deletes provisions relating to the  
16 rental or lease of motor vehicles. Provides for  
17 determining the location of the sale or recharge of  
18 prepaid calling arrangements. Provides guidelines for  
19 determining the situs of certain transactions. Provides  
20 general rules for determining the location of  
21 transactions involving the retail sale of tangible  
22 personal property, digital goods, or services and for the  
23 lease or rental of tangible personal property. Requires  
24 certain business purchasers to obtain multiple points of  
25 use exemption forms. Requires that a purchaser seeking a  
26 refund or credit under ch. 212, F.S., to submit a written  
27 request for the refund or credit. Prescribes additional  
28 guidelines and procedures with respect to dealer credits  
29 for taxes paid on worthless accounts. Provides for  
30 amnesty to certain sellers for uncollected or unpaid  
31 sales and use taxes. Provides that authority to  
administer the Streamlined Sales and Use Tax Agreement  
rests with a governing board comprised of representatives  
of member states. Provides for the registration of  
sellers, the certification of a person as a certified  
service provider, and the certification of a software  
program as a certified automated system by the governing  
board under the Streamlined Sales and Use Tax Agreement.  
(See bill for details.)